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March 5, 2008

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**Cheryl A. Musgrave, Commissioner
Indiana Department of Local Government Finance
100 North Senate Ave., Rm. 1058B
Indianapolis, IN 46204**

Re: March 1, 2006 Assessments / LaPorte County

Dear Commissioner Musgrave:

This letter serves as a pre-hearing submission on behalf of LaPorte County, Indiana regarding the Department's review of the County's 2006 ratio study. The Department previously engaged in what LaPorte County believes to have been two careful examinations of assessments for tax year 2006 in LaPorte County, and twice found them to be uniform, equal, and in accordance with Indiana law. One year after the Department first approved LaPorte County's 2006 ratio study – and after a second Department approval of the same study – it appears the Department has already decided to single out LaPorte County by rejecting the exact same methodology repeated approved by the Department for a significant number of other counties, and to reject this methodology based upon its own problematic analysis.

In addition, the possible reassessment of LaPorte County, in whole or in part, is a serious matter undertaken at considerable expense to taxpayers of the County. A responsible and fair check of assessments demands a careful and thoughtful analysis of data. The Department is rushing to public hearing and media blitz without giving the County an adequate amount of time to review the Department's analysis and even before Department employees have finished gathering information from county government. After reviewing the Department's analysis for only a short time, many problems have been discovered. For example, the Department

used the County's preliminary ratio study instead of the County's final ratio study, and the Department converted sales dates into value. LaPorte County demands a careful analysis of accurate data, but it appears as though the agency places primary emphasis on appearing in a public forum and talking to the media. These activities are in stark contrast to an objective and responsible review of LaPorte County's 2006 ratio study.

Thirdly, the Department has engaged in activities that call into question the objectivity and fairness of the agency. An ex parte meeting was held with Messrs. Atherton, Wendt, and Denne when fairness and impartiality (and the Department's own previously enunciated procedures) demanded a meeting with all parties present. The County repeatedly asked the Department to follow the procedures outlined in Commissioner Musgrave's letter dated December 21, 2007 (a meeting of all parties in order to review the Department's analysis) but the Department refused. The Department gave the County 24 hours to review and respond to its analysis and submit all evidence to the agency even though the County asked for a reasonable amount of time within which to so do.

LaPorte County strenuously objects to any reassessment based on the significantly flawed analysis with inaccurate and mis-sorted data. Likewise, the County objects to the process, procedure, and apparent lack of objectivity of the agency. LaPorte County asks that this letter and accompanying binder of documents be included into the record.

Requests To The Department

1) The Department's "Notice of Public Hearing" issued February 29, 2008, appears to rely upon Ind. Code § 6-1.1-4-31 for authority to check annual adjustments (trending) and other work performed by local assessing officials. LaPorte County reasonably requests that the Department provide specific citation to the statute under which its actions are being taken in this matter.

2) On March 4, 2008, at approximately 4:30 p.m., the County Assessor's Office received a telephone call informing the Office that two employees of the Department, Everett Davis and Terry Knee, would be gathering information from county government on March 5 and 6, 2008. The County requests the preliminary study done by the Department before its employees collected this information as well as a detailed account of what occurred after the information

was gathered. The County asks that this information be provided to it and also included in the record of the proceedings.

The County asks the Department to: (a) issue an immediate retraction of the plainly obvious and grossly flawed analysis provided to the parties last evening, and (b) cancel both the Department's pre-hearing meeting with the local newspapers and the public hearing currently scheduled for March 6, 2008.

Background

As everyone is well aware, the Department and the State Budget Agency asked the Indiana Fiscal Policy Institute to perform a Property Tax Equalization Study providing the State with a determination regarding the 2002 state-wide reassessment and its results. The firm Almy, Gloudemans, Jacobs and Denne was a consultant for the Study. The results of the Study pertaining to LaPorte County raised significant questions regarding the results of the 2002 reassessment and should likely have been the basis of Department action regarding the reassessment. No action was taken.

Carol McDaniel, who was the newly elected LaPorte County Assessor, was left to face the problems with reassessment. Beginning in 2004, Nexus scrutinized assessments county-wide, with particular emphasis on the most problematic townships and classes of property within the County. Nexus continued scrutinizing assessments and engaged in comprehensive trending activities for tax year 2006. The details of Nexus' activities for tax years 2004, 2005, and 2006 are provided.

Assessed values for residential properties increased in tax year 2006, as did the assessed values for commercial and industrial properties. Up-scale homes (\$650,001 and above) saw a 98% increase in assessed value for 2006. The increase may have been disconcerting to some taxpayers, particularly those with outstanding homes along the Lake Shore Drive area in Michigan Township. The assessed values were set by the market and the increase in value was necessary so as to spread the burden of taxation uniformly among LaPorte County residents.

LaPorte County's 2006 ratio study was reviewed and approved by the Department on March 16, 2007. Prior thereto, William Wendt hired (at the recommendation of Ms. Harmon) and paid for a ratio study performed by Robert Denne. The Denne ratio study was completed in February 2007 and submitted to the Department.

Nexus reviewed and rebutted the Denne February Study on behalf of LaPorte County. Thereafter, the Department approved the County's 2006 ratio study.

On July 18, 2007, Governor Daniels ordered a reassessment of all real property in Marion County, Indiana, and said it was likely that reassessments would be ordered in other counties. The Governor's media release is found at www.in.gov/dlgf/news/07182007-reassessment.html. Thus, the Department began what we believe to be careful analyses of assessment data in other counties, including LaPorte. The Department's analyses resulted in the order of reassessment, in whole or part, for 20 Indiana counties. Reassessment was not ordered for LaPorte County. The Department re-approved LaPorte County's 2006 ratio study on September 7, 2007.

Afterward, a second Denne ratio study was submitted to the Department and a request for reassessment was made by Mr. Wendt. The Department met privately with Messrs. Atherton, Wendt, and Denne. See Atherton letter to Commissioner Musgrave dated October 29, 2007, found at www.in.gov/dlgf/rates/pdf/Atherton_letter_with_DenneQualifications.pdf. LaPorte County also asked the Department to follow its previously outlined procedure (sharing its analysis with the parties and then having a meeting with the parties to discuss the analysis and other relevant matters), but the Department would not have a meeting with County assessing officials or representatives in attendance. LaPorte County was given the opportunity to provide a written response to the second Denne ratio study. In particular, the County's response focused on a flawed Denne study which used almost exclusively 2006 sales to purportedly measure assessment uniformity and accuracy of 2006 assessments, and the erroneous conclusion of sales chasing. With the submission of the second Denne study, the Department began its third review of LaPorte County's 2006 ratio study.

On February 25, 2008, Timothy Rushenberg informed the County of the Department's desire to hold a public hearing on March 6, 2008. In response, the County questioned the need for a public hearing and asked why the Department was not adhering to its previous agenda to share the agency's analysis with the parties and have a joint meeting to discuss the analysis before any public hearing occurred. The County also asked for a reasonable amount of time within which to review and respond to the Department's analysis. Mr. Rushenberg rejected all such requests. Thereafter, on March 4, 2008, the Department shared its analysis with the

parties. On the same day the County Assessor's Office was notified that Messrs. Davis and Knee would be in LaPorte County on March 5 and 6 to gather additional information from county government. Also on March 4, 2008, the County discovered that the Department had already arranged to meet with the editorial boards of the local newspapers in advance of the County's receipt of the agency's analysis and in advance of the public hearing. The Department is talking to the media at the same time its employees are gathering information regarding 2006 assessments.

After approximately 5 hours of cursory review of the Department's analysis, the following errors were found:

- 1) The basis for the Department's study was the preliminary ratio study submitted for LaPorte County in December 2006. The Department requested the addition of more sales in this study. In February 2007, a revised ratio study was submitted for LaPorte County, which was subsequently approved in March 2007. The County asked that this final study be the basis for the agency's analysis, as the County included several sales, at your agency's request, that the Department's analysis does not include.
- 2) The Department's analysis of improved residential property in Michigan Township fails to match the parcel numbers with the correct assessment data and sales prices. Once these errors are corrected, and using the Department's methodology of analysis, the corrected parcels now result in compliant statistics.
- 3) The Department's analysis of vacant residential property in Clinton Township contains 1 record that does not match with the county's billing system. In fact, it appears to be a duplicate parcel with 2 different billing assessed values, which appears impossible. Removing this one entry results in compliant statistics.
- 4) The Department's summary statistics for vacant residential parcels in Wills Township do not match the actual calculated statistics in the Department's worksheet. The worksheet illustrates that the calculated statistics are compliant.
- 5) The Department's analysis of improved commercial in Center Township contains 1 invalid sale and omits several parcels used in the final LaPorte County Ratio Study. Once these corrections are made, the statistics appear compliant.
- 6) The Department's analysis of improved commercial property in New Durham Township has only 4 sales. The combined statistics for this class should be used and/or the Spearman Test.

7) The Department's analysis of improved industrial has at least one formula error resulting in incorrect statistics. Once this formula is corrected, the statistics appear compliant.

Given the significant number of errors that discovered in a cursory review of the Department's analysis, the County requested an extended period to review this analysis, along with all other tables and studies. It is highly likely that further errors will be discovered, resulting in even more townships and property classes being deemed compliant by Indiana law. Further, the Department was encouraged to make these corrections before further distribution or public comment, as these objective errors warrant immediate adjustment. Nexus offered to visit each of these errors individually to ensure the objective review of LaPorte County's 2006 assessments.

State-Wide Consistency, Not Disparate Treatment

In prior correspondence LaPorte County has described its 2006 ratio study and has repeatedly explained how and why its ratio study is based on a truly representative sampling of sales for the relevant time period and is NOT the result of sales chasing. Mr. Wendt should bear a heavy burden of proving that the Department erroneously approved LaPorte County's 2006 ratio study twice – both approvals occurring subsequent to the submission of a Denne ratio study.

The credentials of Nexus are easily substantiated – Nexus is the State's leading property tax consulting firm with vast experience in *Indiana* property tax assessment procedures and practices. Key to the Department's review of LaPorte County's 2006 ratio study is consideration of consistency among counties.

For example, the sales-assessment methodology that was used by Nexus for LaPorte County's 2006 ratio study was the same methodology used for the 2002 ratio studies in the following counties. Allen, Brown, Daviess, Dekalb, Franklin, Hamilton, Hancock, Hendricks, Henry, Jasper, Knox, Jay, Martin, Monroe, Rush, St. Joseph, Tipton, Vanderburgh, Wayne, and Wells. Each of these ratio studies was approved by the Department. The same methodology was also used for the 2006 ratio studies in the following counties: Allen, Brown, Clark, Daviess, Dekalb, Franklin, Grant, Hancock, Hendricks, Henry, Jasper, Knox, Lake, Monroe, Rush, Shelby, Steuben, Tipton, Wayne, and Wells. Each of these ratio studies was approved by the Department. Finally, the same

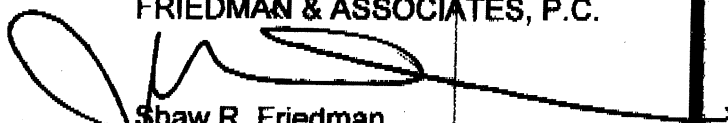
methodology was used for the following counties whose 2007 ratio studies have been approved by the Department: Allen, Daviess, Dekalb, Fayette, Franklin, Grant, Hancock, Henry, Knox, Monroe, Rush, Steuben, Tipton, Wayne, and Wells. The possibility that a methodology repeatedly approved by the Department will at this late stage be rejected by the Department is alarming. Such an inconsistency implicitly infers the Department's inability to fulfill its statutory responsibilities, and reveals disparate treatment of LaPorte County.

Summary

With approximately 24 hours to review the Department's flawed work product, it is fair to say that not all problems with the agency's analysis have been found or explained in detail. It is fair to ask the Department to either issue a corrected study or to retract the current work product until such time as a corrected analysis can be produced. The situation now facing the Department and LaPorte County is exactly why the Department should have met with the parties as repeatedly requested by the County. There is no legitimate reason for the Department to press forward with its current planned course of action until all parties have the opportunity to correct the fundamental errors that plague the agency's work and check further for inaccuracies in the agency's work.

Should the Department choose to proceed immediately with media relations and the public hearing, this letter also explains some reasons why reassessment, in whole or in part, is unwarranted.

Very truly yours,
FRIEDMAN & ASSOCIATES, P.C.



Shaw R. Friedman
Attorney at Law

SRF:lt

**Objections In The Matter Of The Department of Local
Government Finance's Review Of LaPorte County's 2006 Ratio Study**

Objection: The Department improperly / groundlessly denied the County's request for a reasonable amount of time to review and respond to the Department's analysis of LaPorte County's 2006 assessment, and also deviated from the procedure it previously outlined for the parties.

By email dated February 25, 2008, the Department notified the County of its desire to hold a public hearing on the matter of the County's 2006 ratio study. The County responded and strongly encouraged the Department to follow the procedure it outlined to the parties on December 21, 2008; namely: to have a joint meeting with the parties after they had the opportunity to review the Department's analysis of the County's 2006 assessments. Assuming that a public forum was even necessary, the County stated it would not be in a position to participate in a public forum until the Department's analysis was shared and the County was given a reasonable amount of time to review and respond to it. The Department refused to follow its own procedure and improperly / groundlessly denied the County's reasonable request for a reasonable amount of time within which to review and respond to the Department's analysis. Instead, the Department gave the parties approximately 24 hours to review the Department's analysis and established a deadline of March 5, 2008 at 4:30 p.m. for the submission of all documentation that would be considered by the Department.

The possible reassessment of LaPorte County, or any part thereof, is viewed by the County as a serious matter undertaken at considerable cost to the taxpayers. There is no legitimate reason for the Department to rush to a public hearing and to refuse the parties a reasonable amount of time to review the Department's seriously flawed analysis, i.e., the Department's analysis used the County's preliminary 2006 ratio study instead of the final study that was approved by the Department. A responsible and fair check of assessments demands a careful analysis and review thereof. The Department's rush to public hearing contradicts that meaningful and accurate review.

By email sent on March 5, 2008, at 11:09 a.m., Timothy Rushenberg explained that the Department will not presently release its analysis due to the flaws raised by Nexus and encouraged additional emails from the parties concerning the agency's analysis. Discounting the naiveté of "no release" since the media has already been alerted, the focus of the agency should be on accuracy and careful consideration instead of following through on its course of action and waiting to see if additional work product or meetings is necessary.

Objection: The Department engaged in ex parte communications with Messrs. Atherton, Wendt and Denne. By so doing, it failed to follow its own previously enunciated procedure of meeting with the parties to discuss the Department's analysis of LaPorte County's 2006 assessments.

Commissioner Musgrave met privately with Messrs. Atherton, Wendt, and Denne regarding LaPorte County's 2006 ratio study. Ex parte meetings such as this are against the basic rule that an administrative agency charged with a fair and impartial review meet with all parties present.

In addition, Commissioner's Musgrave's private meeting failed to follow the previously outlined procedure for having a meeting with the parties to discuss the Department's analysis of LaPorte County's 2006 assessments and any other relevant matters.

Objection: The Department considered certain Denne information but improperly refused to provide it to the County on the grounds it contained "trade secrets."

There may be a redistribution of tax burden based upon secret information. Though LaPorte County requested from the Department, the agency refused to provide certain data on the basis of trade secrets. This undisclosed information is a part of the process leading up to a public hearing on the matter of the County's 2006 ratio study and was considered by the Department in its review of the County ratio study. The undisclosed information *may* be confidential; however, as a matter of course, confidential information is disclosed to other parties in administrative proceedings with a confidentiality agreement or order.

Objection: Arrangements made by the Department in advance of the County receipt of the Department's analysis of the County's 2006 assessment and in advance of the public hearing is highly irregular and raises significant concerns about the objectivity and fairness of the agency.

The Department made arrangements to meet with the editorial boards of both local newspapers in advance of the County's receipt of the Department's analysis and in advance of the public hearing regarding LaPorte County's 2006 ratio study. These media events will be conducted *at the same time* Messrs. Davis and Knee are in LaPorte reviewing additional information from county government as the analysis is apparently still underway. Such media related activities is highly irregular for an agency and plainly raises legitimate concerns about the objectivity and fairness of the Department regarding this matter. In addition, the Department's arranged a media event while its employees were still gathering information. There is no legitimate reason for this rush to talk to the media and the County asked the Department to cancel its media blitz. The Department's arrangements to talk to the press are in stark contrast to a meaningful and accurate review of the matter at hand.